IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8833 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANGARAM S PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8833 of 1990

MRS DT SHAH for Petitioner

MR MUKESH PATEL AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 30/11/2004

ORAL JUDGEMENT

Heard the learned advocates.

This is a petition preferred under Article 227 of the Constitution of India against the judgment and order dated 13th September, 1990 passed by the learned Industrial Tribunal, Ahmedabad [hereinafter referred to as, `the Tribunal'] in Reference (IT) No. 303 of 1987.

The petitioner is a workman. He initially joined service of the State Government as a daily wage employee. By order dated 7th August, 1976 made by the Executive Engineer, Central Workshop Division, the respondent no.3 herein, the petitioner was absorbed in Work-charge establishment as a Fitter in the payscale of Rs. 260-350. The petitioner raised an industrial dispute and claimed higher scale of Rs. 350-560, or, in the alternative, promotion to the post of Junior Assistant [Mechanic]. The said dispute was referred to the Industrial Tribunal and registered as aforesaid.

By impugned judgment and order, the Tribunal held that the petitioner was not qualified to hold the higher post of Junior Assistant [Mechanic] nor was he entitled to the higher payscale of Rs. 350-560 of a qualified Fitter.

Learned advocate Mrs. Shah has appeared for the workman. She has submitted that the petitioner had produced certificate issued by one Gulsan Institute of Automobile Engineering certifying that the petitioner had passed certificate course and that the said Institution was recognized by the State Government. She has, therefore, submitted that the aforesaid finding recorded by the Tribunal is erroneous and contrary to the evidence on record. She has submitted that copy of the said certificate was admitted in evidence. In absence of any evidence to the contrary, the said certificate was required to be accepted by the Tribunal. In the alternative, she has submitted that the State Government has relied upon the Resolution of the then Government of Bombay passed on 17th December, 1958. The said Resolution having been issued by the then State of Bombay shall have no applicability to the workman who was appointed by the State of Gujarat in the year 1976 i.e. long after bifurcation of the State of Bombay. She has next contended that in the written argument submitted by the workman, the workman had pointed out several instances of Fitters junior to the workman, not possessing the requisite qualification who have been given the higher payscale of Rs. 350-560. Mrs. Shah has submitted that the specific contention raised by the workman was neither answered nor denied by the State

Government. In absence of bare denial, the contention raised by the workman was required to be accepted by the Tribunal. The claim made by the workman ought to have been accepted also on the principle of equality.

I see no substance in any of the contentions raised by Mrs. Shah. The Resolution of the Government of Bombay dated 17th December, 1958 prescribes recruitment rules, inter alia, for the posts of Fitters in the Public Works Department. The said rule reads as under :-

"FITTERS [Higher Grade & Lower Grade] :

Appointment shall be made by nomination from among candidate who -

(i) are not more than 25 years of age; and

(ii) (a) in the case of lower grade posts, have practical experience of a Fitters job for a minimum period of two years.

(b) in the case of higher grade posts, have passed the prescribed course of Fitters from a Government Technical School or an equivalent course recognized by Government."

Unless specifically annulled or modified, or altered by the Government of Gujarat, by virtue of the Gujarat Adaptation of Laws [State & Concurrent Subjects] Order, 1960, the said recruitment rules shall continue to operate in the State of Gujarat. The contention that the said rules do not apply in the State of Gujarat requires to be rejected. Under the said rules for appointment to the higher grade post, a Fitter is required to have passed the prescribed course of Fitters from a Government Technical School or an equivalent course recognized by the Government. Admittedly, the workman has not passed the course of Fitters from a Government Technical School but he has produced a Certificate issued by one Gulsan Institute of Automobile Engineering. The certificate dated 10th September, 1986 Exh. 23/2 has been issued by the said Gulsan Institute of Automobile Engineering certifying that the petitioner was a student of the said Institution. On 7th September, 1970 he had passed a diploma course of Automobile Technician. The said certificate also indicates that the said Institute has been recognized by the Gujarat Government by Resolution

dated 29th August, 1984. It should be noted that the petitioner failed to prove that the said Gulsan Institute of Automobile Engineering was recognized by the Government of Gujarat in the year 1970 or that the course undertaken by the petitioner was recognized as equivalent to the Fitter's course. In absence of any specific evidence, the Tribunal has rightly held that the petitioner did not possess required qualification of Fitters course recognized by the Government of Gujarat. The petitioner, therefore, cannot be said to be qualified for the post of itter [Higher Grade].

Mrs. Shah has also contended that the relevant rules provide for payscale of Rs. 350-560 for Fitters; whether qualified or not. Therefore also, the petitioner was required to be paid salary in the payscale of Rs. 350-560. The contention is misconceived. It is evident that the Fitters were classified in two groups depending upon their qualifications as far back as on 17th December, 1958 also. The payscales of the work charge employees in the Government service were revised by Government Resolution dated 8th July, 1976. The said Resolution also refers to two scales of pay i.e. one of Rs. 130-240 [revised to Rs. 350-560] and for Fitters (Lower Grade) of Rs. 120-160 [revised to Rs. 260-350]. Thus, the Fitters even prior to the appointment of the petitioner were classified in two groups based on the qualification possessed by such fitters. The workman having failed to prove that he did possess or had acquired the required qualification of Fitter's Course in a Government Technical School or an equivalent course recognized by the Government, the Tribunal has rightly rejected the claim of the workman.

Mrs. Shah has emphatically relied upon the written arguments submitted by the workman. She has submitted that in the said written arguments, the workman had mentioned names of the Fitters who carried higher payscale. The said submission was not answered by the respondents-authorities. In absence of any evidence to the contrary, the workman was required to be given higher payscale of Rs. 350-560 on the principle of equality enshrined in Articles 14 and 16 of the Constitution. Mrs. Shah has read out statement of claim [the pleading] filed by the workman. The aforesaid specific averment has not been made in the statement of claim or not referred to in the oral evidence. All that is said in paragraph 5 of the statement of claim is about certain junior persons and helpers having been appointed as Junior Assistant [Mechanic]. Neither the names of such persons have been stated nor it is stated that such

persons did not possess required qualification. The workman could not have added or brought new facts on the record of the matter in the form of written arguments. Such contention has rightly not been accepted by the Tribunal.

No other contention is raised before me. No case for interference is made out. The petition is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*